HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. 473 of 2006 (MS)

Shafiq Ahamad & others — Petitioner

Vs

A.D.J. & others — Respondents

Approved for reporting

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Not approved for reporting

Date of decision: 18.07.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.473 of 2006 (MS)

1. Shafiq Ahmad s/o late Sri Abdul Hameed
2. Hanif Ahmad s/o late Sri Abdul Hameed
3. Anees Ahmad s/o late Sri Abdul Hameed, petitioners no.2 and 3 are unsound minded through next friend Sri Shafq Ahmad, Govind Ballabh Marg, Haldwani, District Nainital.
4. Smt. Shafiqua Daughter of Late Sri Abudl Hameed, Line No. 17 Azad Nagar Haldwani, District Nainital.

.....Petitioners

Versus

1. Additional District Judge, Haldwani, Nainital.
2. Anop Kumar s/o Sri Manni Lal r/o Karkhana Bazar, Haldwani, District Nainital ..... Respondents

Sri I.A. Khan, Advocate for the petitioners.
Standing Counsel for respondent no.1.
Sri Sudhir Kumar, Advocate for respondent no.2.

Dated: 18.07.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner have prayed for a writ of certiorari quashing the order dated 30.1.2006 and 6.3.2006 passed by the respondent no.1.

Briefly stated a suit No.93 of 2005 has been filed by the petitioners for permanent injection and for a decree of declaration that the defendant is not the owner and having no lawful title of ownership and is also not the landlord of the premises. Another suit No. 17 of 1992 Anoop Kumar vs. Haneef Ahmad and others was also pending in the Court of Judge, Small Causes Court, Haldwani. The suit was filed in the month of September 2005. Both the suites are between the same parties

and the subject matter is also the same. The petitioners have filed written statement and challenged the, title and ownership of the plaintiff and further challenged the relationship of landlord and tenant in between the parties. In the written statement the petitioner defendants not only denied the alleged tenancy of late Abdul Hammed in respect of the shop in dispute but also stated that late Abdul Hameed, the father of the petitioners had constructed the shop in dispute out of his own funds abut 45-50 years before his death. During the pendency of the suits, the petitioners have filed the application for consolidating both the suits but the same was rejected on 6.3.2006 and a finding was recorded that the S.C.C. suit is pending for the last 14 years. While rejected the application for consolidation of both the suits, the Judge, small Causes Court has observed that in view of the case of Shamim Akhtar vs. Iqbal Ahamad AIR 2001 SC 1, the Judge Small Causes court has jurisdiction to look into the title of the landlord as an incidently.

Another application has been filed in SCC Suit No. 17 of 1992, which is paper no. 180-C by which he has prayed that the suit may be stayed under section 10 and 151 C.P.C. The Presiding Officer has recorded a finding that the SCC suit was filed in the year 1992 and after 13 years injunction suit has been filed and there is no occasion to stay the proceedings of the S.C.C. suit. It may be pointed out that earlier also, the petitioners have filed the application paper no. 49-C, which was rejected on 11.5.2005. So far as application paper no. 192-C is concerned which has been filed for consolidating both the suits, nature of both the suits are quite different. The suit has been filed before the Civil Court for injunction after 13 years of filing

of S.C.C. suit, of action of both the suits being different, there is no occasion of consolidating both the suits. The suit in Small Causes Court has been filed under the Provincial Small Causes Courts Act, whereas the suit for injunction has been filed under Specific Relief Act, therefore, both the suits cannot be consolidated together.

So far as application paper no. 180-C is concerned there is no question of stay of the proceedings of the suit. The question of title of landlord shall be decided incidently and as such there is no occasion to stay the proceedings of the suit having been filed in the year 1992.

Similar controversy has comp up in the case Rakesh Kumar vs. Smt. Madhu Gupta, 2006 (3) ALJ 153 where the earlier suit was instituted by the tenant for injunction against the landlord restraining him from interfering in the peaceful possession of the tenant. Subsequent suit was filed by the landlord for eviction of the tenant. It has been held that the Suit for eviction lies before the Small Caused Court whereas the injunction suit has to proceed before the Civil Court.

The observation made in the case ***Shamim Akhtr v. Iqbal Ahmad*** AIR 2001 SC 1 is quoted below:

"12. *The trial court in the facts and circumstances of the case clearly erred in returning the plant to the plaintiff-appellate under Section 23 of the Small Cause Court Act. Section 23(1) provides that when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depends upon the proof or disproof of a title to immovable property or other title which such a court cannot finally determine, the court may at any state of the proceedings return the plaint to be*

presented to a court having jurisdiction to determine the title. The power vested under sub-section (1) in the court is discretionary. It is to be exercised only when the relief claimed by the plaintiff in the proceeding before the Small Cause Court depends upon the proof or disproof of a title to the immovable property and the relief sought cannot be granted without determination of the question. In the present case, as noted earlier, the plaintiff filed a petition for eviction under Section 20(2) (f) alleging that she was the landlady of the house and she had inducted Respondent 1 as tenant of the premises. The question was whether that case was to be accepted or not. Indeed the trial court, at the first instance, had accepted the plaintiff's case holding, inter alia, that she had got the property by a registered deed of gift from Smt Khairunnisa Bibi who in turn had been gifted the property by her mother Fakia Bibi who, undisputedly was the original owner of the property. The question of title of the plaintiff to the suit house could be considered by the Small Cause Court in proceedings as an incidental question and final determination of the title could be left for decision of the competent court. In such circumstances, it could not be said that for the purpose of granting the relief claimed by the plaintiff it was absolutely necessary for the Small Cause Court to determine finally the title to the property. The respondent tenant by merely denying the relationship of landlord and tenant between himself and the plaintiff could not avoid the eviction proceeding under the Rent Control Act. That is neither the language nor the purpose of the provisions in Section 23(1) of the Small Cause Court Act."

In view of the aforesaid, I do not find any illegality in the order dated 30.1.2006 and 6.3.2006. However, it is made clear

that the Judge, Small Causes Court Shall frame that point for determination with regard to the title of landlord and shall decide the same in accordance with law while deciding the suit.

Subject to the above observation made in the body of the judgment with regard to the framing of issues with regard to the title of the landlord writ petition fails and is dismissed.

No order as to costs.

Rajesh Tandon, J.

18.07.2006
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